S.B.Civil Writ Petition NO.1440/2005
Smt.Vimla
vs
Civil Judge (JD) No.2, Jodhpur & Ors.

DATE OF ORDER : - 15.3.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Vinay Shrivastava,for the petitioner.

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Heard learned counsel for the petitioner.

According to petitioner, the petitioner sought relief of injunction against the defendant-respondent that he should not stop the water outlet of the petitioner's house by raising construction of stairs or by raising any other construction. According to petitioner, the defendant-respondent during the pendency of the suit, raised the construction of the ramp and, therefore, it is necessary to seek further relief of removal of the ramp, which will be in consonance with the relief of injunction of not stopping the drain of the petitioner. According to learned counsel for the petitioner, the trial court has committed error in rejecting the petitioner's application. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Pankaja & Another Vs. Yellapha (Dead) by Lrs and Ors reported in (2004) 6 SCC 415 wherein it was held that even where the relief sought to be added by amendment is

allegedly barred by limitation even then there is no absolute rule that amendment in such a case should not be allowed. The Hon'ble Supreme Court also observed that an amendment subserving the ultimate cause of justice and avoiding further litigation should be allowed. According to learned counsel for the petitioner by allowing amendment the cause of justice will serve and further litigation will be avoided.

I considered the submissions of learned counsel for the petitioner and perused the reasons given in the impugned order. The trial court very carefully read the prayer of the petitioner made in the plaint and observed that the petitioner's relief is wide enough to cover the relief with respect to the alleged ramp and, therefore, the trial court observed that in the light of the pleadings of the parties, the amendment is not needed at all as the alleged ramp is also covered in the relief as petitioner prayed that (any other construction).

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-